

In the High Court of Judicature at Madras

Dated: 07.04.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.423 of 2016 and
C.M.P. No.6161 of 2016

The Secretary to Government
(Expenditure)
Finance Department,
Secretariat,
Chennai - 600 009

..Appellant/Respondent

Vs.

T.Gunasekaran
Assistant,
Finance Department,
Secretariat,
Chennai - 600 009

..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Appeal against the Order of this Court dated 28.04.2014 made in W.P. No. 11105 of 2014.

WA.NO.11105 of 2014:Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the respondent issued in G.O.M.S.No.339 Fin(OP-2) dated 31/7/2013 and quash the same and consequently direct the respondent to include the name of the Petitioner in the panel already issued in G.O.Ms.No.458 Fin(OP-1) dated 19/12/2013 fit for promotion tot he post of Assistant Section officer and promote the petitioner as such on par with his junior with all monetary, attendant and consequential benefits.

For Appellant : Mrs.A.SriJayanthi
Special Government Pleader

J U D G M E N T

[Judgment of the Court was Delivered By
M.VENUGOPAL, J.]

The Appellant / Respondent has preferred the present intra court Writ Appeal as against the Order dated 28.04.2014 in W.P.No.11105 of 2014 passed by the Learned Single Judge.

2. The Learned Single Judge while passing the Order on 28.04.2014 in W.P.No.11105 of 2014 (filed by the Respondent / Petitioner) at Paragraph Nos.5 to 7 had observed the following:-

"5. Now, taking the issue of non inclusion of the petitioner in the panel for promotion for the post of assistant Section Officer, from the letter of the Secretary to Government (Expenditure) dated 30.01.2014, it is crystal clear that the petitioner has not been included because of the currency of punishment of censure. This cannot be accepted for the reason that in The Deputy Inspector General of Police, Thanjavur Range V. V.Rani (2011 (3) CTC 129), a Full Bench of this Court has held that punishment of censure cannot be an impediment for promotion at all. There is no currency period of censure also.

6. In view of the said judgment of the Full Bench of this Court, the petitioner herein is entitled for being included in the panel for promotion in G.O.Ms.No.458 Fin (OP-I) Department dated 19.12.2013 and he is entitled for promotion to the post of Assistant Section Officer from the date on which him immediate junior was promoted with all consequential service benefits.

7. In view of all the above, the writ petition is disposed of in the following terms:-

(i) This writ petition is dismissed in respect of the challenge made to G.O.Ms.No.339 dated 31.07.2013 and the order of punishment of censure is hereby confirmed;

(ii) The respondent is directed to include the name of the petitioner in the panel for promotion to the post of Assistant Section Officer as per G.O.Ms.No.458 dated 19.12.2013 and promote the petitioner from the date on which his immediate junior was promoted as Assistant Section Officer with all the other service benefits and

(iii) The consequential order giving promotion to the petitioner shall be passed by the respondent within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

and resultantly dismissed the Writ Petition without costs.

3. Challenging the Order dated 28.04.2014 in W.P.No.11105 of 2014 passed by the Learned Single Judge, the Appellant/Respondent has filed the instant Writ Appeal mainly contending that the Order of the Learned Single in directing Appellant/ Respondent to include the name of the Respondent / Petitioner in the panel for promotion to the post of Assistant Section Officer as per G.O.Ms.No.458, Finance (OP-I) Department, dated 19.12.2013 and promote him from the date on which his immediate junior was promoted as Assistant Section Officer with all other service benefits and the consequential order of granting promotion to the Respondent/Petitioner from the date of receipt of a copy of the order is not a justifiable one based on the facts and circumstances of the case.

4.The Learned Special Government Pleader for the Appellant / Respondent submits that the Learned Single Judge had considered that non-inclusion of the name of the Respondent/Petitioner in the panel for promotion to the post of Assistant Section Officer for the year 2013-2014 issued in G.O.Ms.458 Finance (OP-1) Department dated 19.12.2013 is in accordance with the Orders issued in Letter No.67652/S/2002-6, Personal and Administrative Reforms Department, dated 27.08.2003 and subsequently the said Orders were suitably incorporated in the General Rules in the Tamil Nadu State and Sub-ordinate Services vide in G.O.Ms.No.22, Personal and Administrative Reforms (S) Department dated 24.02.2014.

5. Lastly it is the stand of the Appellant that the Learned Single Judge should have dismissed the Writ petition as situation that prevailed on the date of Judgment of the Full Bench i.e, on 27.04.2011 was completely modified since the concerned Government Orders were incorporated in the General Rules invoking the proviso to Article 309 of the Constitution of India.

6. The case of the Respondent / Petitioner as seen from the affidavit in the Writ Petition is that he was not included in the panel for promotion to the post of Assistant Section Officer just because of the fact that he was awarded with the punishment

of 'Censure' on 31.07.2013. Further, it comes to be known that the Respondent had made a representation to the Appellant dated 30.09.2013 stating that the said punishment of 'censure' was not a reason to deny him promotion. Thereafter, he had made representations in this regard.

7. It transpires that the Respondent / Petitioner was not promoted, but, he was informed by means of a communication in Letter No.1646/OP-I/2013-7 dated 30.01.2014 by the Appellant / Respondent that inasmuch as he was imposed with the punishment of 'censure' as per G.O.Ms.No.339 dated 31.07.2013 and since the said punishment is 'currency' in nature on the date of consideration, his name in the panel for promotion in G.O.Ms.No.458 dated 19.12.2013 was deferred. Assailing the validity, legality and correctness of the same, the Respondent / Petitioner had filed the Writ Petition.

8. At this juncture, this Court aptly points out the decision of this Court in Deputy Inspector General of Police, Thanjavur Range, Thanjavur and Another V. V. Rani (Full Bench) reported in 2011 (3) CTC at Page 129 at Special Page 130 whereby and whereunder it is observed and held as under:-

" Therefore, the contention of Mr.G.Rajagopal, learned Senior Counsel appearing in W.A.(MD) No.587 of 2010 and Mr.Ajmalkhan, learned Counsel for the Petitioner in W.P.(MD) No.3602 of 2011 that under Rule 36(b)(ii) of the Tamil Nadu State Subordinate Service Rules elicited above, promotion can be withheld only if a penalty has been passed by withholding the promotion can be withheld only if a penalty has been passed by withholding the promotion and in all other cases irrespective of pendency of penalty, promotion is a matter of right based on seniority is totally unacceptable. In fact, Mr.G.Rajagopal, learned Senior Counsel appearing for the Appellant in W.A.(MD) No.587 of 2010 would fairly submit that his contention is not that in all cases where punishment is being undergone, promotion should be given as a matter of right and that only in cases where promotion is withheld as a penalty as per Statutory Rules, viz., Tamil Nadu State and Subordinate Service Rules, the promotion should be withheld. [para 15]

The above said Rule 36(b)(ii) cannot be read in isolation in order to come to a conclusion that irrespective of merit and ability, even in cases of currency of punishment imposed after following the procedures, a person should be given promotion blindly by seniority as it is antithesis to the service law and it is also opposed to the decision of the Supreme Court

in State of Tamilnadu V. K.S.Murugesan (cited supra). If such contention is accepted, the same will go against the established legal principle that promotion is not a matter of right.
(para 16)

Therefore, after analysis of the entire law on the subject, we answer the reference as follows:-

(1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian V. Government of Tamil Nadu, rep. by its Secretary, Chennai and others, 2008(5) MLJ 350, stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

9. From the aforesaid Full Bench decision, it is crystal clear that the Respondent / Petitioner is rightly eligible / entitled to be included in the panel for promotion in G.O.Ms.458 Finance (OP-I) Department dated 19.12.2013 and further he is entitled for promotion to the post of Assistant Section Officer from the date on which his immediate junior was promoted with all resultant service benefits etc., Viewed in that perspective, the Order of the learned Single Judge in dismissing the Writ Petition in so far as the challenge made in respect of G.O.Ms.No.339 dated 31.07.2013 and the Order of Punishment of 'censure' being confirmed do not suffer from any material irregularities or patent irregularities in the Eye of Law.

10. Apart from that the direction issued by the Learned Single Judge in the Writ Petition to include the name of the Respondent / Petitioner for promotion to the post of Assistant Section Officer in terms of G.O.Ms.No.458 dated 19.12.2013 and promote him from the date on which his immediate junior was promoted as Assistant Section Officer and to confer him with all service benefits also is free from any flaw. Consequently, the Writ Appeal fails.

In fine the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

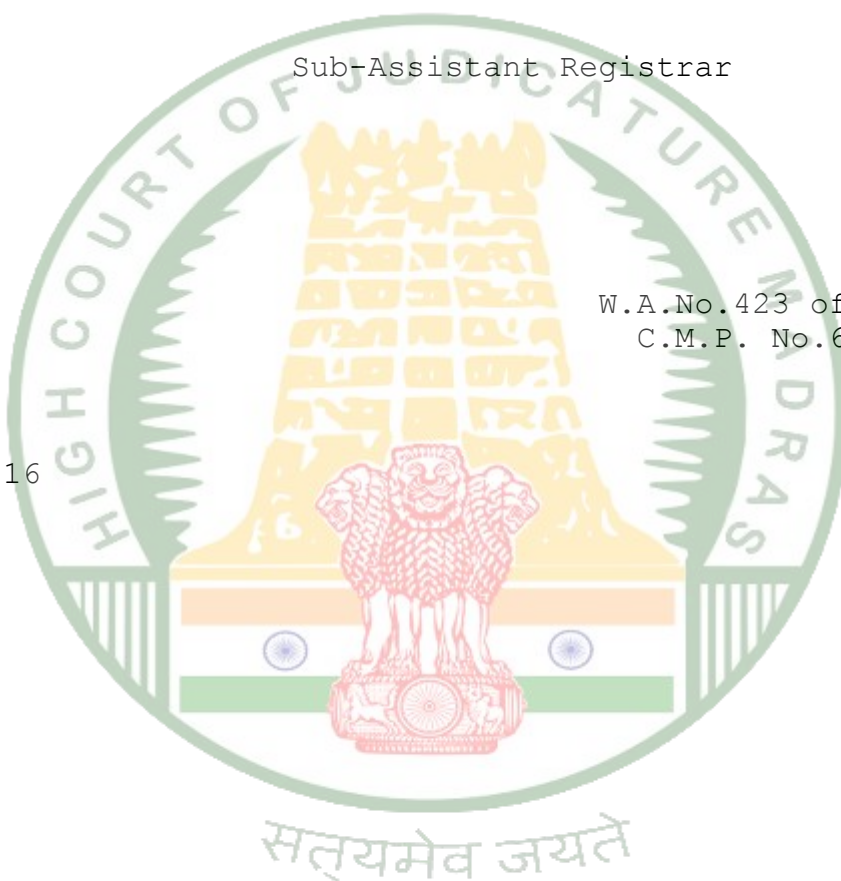
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